



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 16, 1991

Ms. Tamara Armstrong  
Assistant County Attorney  
County of Travis  
P. O. Box 1748  
Austin, Texas 78767

OR91-646

Dear Ms. Armstrong:

You have received three requests for related information under the Texas Open Records Act, article 6252-17a, V.T.C.S. One of the requests seeks "documents pertaining to the County Treasurer's office," specifically, "copies of Dolores Ortega-Carter's application for a Visa credit card through Bank One, purchases made on the credit card and a summary of payments." The second seeks everything "related to any personal financial matters of County Treasurer Dolores Ortega-Carter as have been brought to the attention of the Travis County Auditor's office or the Travis County Commissioners' Court." The third request is for a list "of all the credit card accounts that are billed to the county and of any other credit card accounts that have been brought to the attention of the county auditor's office." You seek to withhold the requested information under sections 3(a)(3) and 3(a)(8) of the Open Records Act.

Section 3(a)(3) permits a governmental body to withhold information that is related to litigation to which the state may be a party. Section 3(a)(8) permits a governmental body to withhold records of law enforcement agencies and prosecutors that deal with the investigation of crime. Information relating to a pending criminal investigation may be withheld if its release would "unduly interfere with law enforcement." See Open Records Decision No. 216 (1978). You state that the district attorney is considering possible criminal action in regard to use of credit cards issued to the Travis County Treasurer and has determined that the requested

information should be withheld because of the pending investigation and the potential criminal litigation. *See* Attorney General Opinion MW-575 (1982).

Although the requested information relates to reasonably anticipated litigation, section 3(a)(3) is generally not available in regard to documents that have already been made available to the other party in the anticipated litigation. *See* Open Records Decision No. 525 (1989) at 4. You inform us that the treasurer, who would presumably be the other party to any such litigation, has had access to the credit card application and the monthly statements, which show both charges and payments. Therefore, those items may not be withheld under section 3(a)(3) of the Open Records Act. Further, those items may not be withheld under section 3(a)(8) since you offer no explanation of how release of records to which the treasurer has had access would unduly interfere with law enforcement.<sup>1</sup> You may, however, delete the account number from the monthly statements. *See* Open Records Decision No. 581 (1990).

The second and third requests are for any material brought to the attention of the county auditor or the county commissioners court in regard to credit card use. The requests are not for specific documents; rather they are requests to the county to identify documents that the county considers to be relevant to a particular matter under investigation. The county may decline to respond to that type of request under section 3(a)(3) and section 3(a)(8). Even documents originally generated by or seen by the potential opposing party in litigation may be withheld since release of any documents in response to such a request would reveal that certain documents were matters of concern.


Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

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<sup>1</sup>In your initial letter to this office you stated that the monthly statements contained personal financial information of the county treasurer and should therefore be withheld under the common-law privacy doctrine, which is incorporated in the Open Records Act by section 3(a)(1). *See generally* Open Records Decision No. 545 (1990). In a subsequent letter you state that the county has determined that the information in this case is not private. We agree.

a published open records decision. If you have questions about this ruling, please refer to OR91-646.

Yours very truly,

A handwritten signature in cursive script that reads "Sarah Woelk".

Sarah Woelk  
Assistant Attorney General  
Opinion Committee

SW/lcd

Ref.: ID# 13242

Enclosure: Open Records Decision No. 581, 574

cc: Michelle T. Johnson  
County Reporter  
Austin American-Statesman  
P. O. Box 670  
Austin, Texas 78767